

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

DOUGLAS R. MCCARROLL,

Plaintiff,

v.

**9:09-CV-0355
(NAM/GHL)**

Y. MATTEAU,

Defendant.

APPEARANCES:

OF COUNSEL:

DOUGLAS R. MCCARROLL
c/o Law Offices of Bruce Corrigan, Jr.
1853 Post Road East
Westport, Connecticut 06880
Plaintiff *pro se*

HON. RICHARD S. HARTUNIAN
United States Attorney for the
Northern District of New York
100 South Clinton Street
Syracuse, New York 13261-7198

CHARLES E. ROBERTS, ESQ.

NORMAN A. MORDUE, CHIEF U. S. DISTRICT JUDGE

ORDER

The above matter comes to me following a Report-Recommendation by Magistrate Judge George H. Lowe, duly filed on the 17th day of May 2010. Following ten days from the service thereof, the Clerk has sent me the file, including any and all objections filed by the parties herein.

After careful review of all of the papers herein, including the Magistrate Judge's Report-Recommendation, and no objections submitted thereto, it is

ORDERED that:

1. The Report-Recommendation is hereby adopted in its entirety.

2. The Defendant's motion to dismiss for failure to state a claim (Dkt. No. 13) is deemed a partial motion to dismiss and is granted without leave to amend the Eighth Amendment or verbal harassment claims.

3. The Court dismisses the following claims sua sponte without leave to amend: (1) the substantive due process claim; (2) the procedural due process claim; (3) the Ninth Amendment claim; and (4) the state law claims for sexual assault, negligence, and assault and battery.

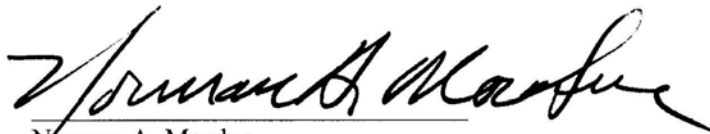
4. The Court dismisses Plaintiff's access to the courts claim sua sponte with leave to amend.

5. The Defendant is ordered to respond to: (1) the retaliation claim; (2) the Fourth Amendment claim; (3) the equal protection claim; and (4) the state law claim for infliction of emotional distress.

6. The Clerk of the Court shall serve a copy of this Order upon all parties and the Magistrate Judge assigned to this case.

IT IS SO ORDERED.

Dated: June 9, 2010
Syracuse, New York



Norman A. Mordue
Chief United States District Court Judge